

REMARKS/ARGUMENTS

The present communication is responsive to the Official Action dated March 23, 2006, finally rejecting the claims currently pending in the application ("Final Rejection"). A two-month extension of the time to respond, up to and including, August 24, 2006, is filed concurrently herewith.

Claims 1, 3-8 and 27-36 are currently pending in the application. Of these claims, claims 1, 4, 5, 6, 8, 27 and 33 are independent claims. All the other claims pending in the application depend from one of these independent claims. Although in the Summary Section of the Final Rejection the Examiner indicated claim 38 as pending in the application, applicants note for the record that claim 36 is the highest numbered claim used thus far.

Claim Amendments

Claim 4 has been amended to now recite "setting a purchase time limit based on the duration of the time it takes to download the content data."

Claim 5 has been amended to now recite "setting a purchase limit time that is associated with the duration in time of one of the plurality of data segments for the music content data."

Claim 6 has been amended to now recite "wherein the purchase limit time is set based on the time it takes to download the content data."

Claim 8 has been amended to now recite "stopping the receiving process in accordance with a purchase limit time that is defined by a contents data download time included in the program information."

Claim 27 has been amended to now recite "a generator for creating a control message, the control message including a purchase limit time that is associated with the time it takes to

download the audio data."

Claim 33 has been amended to now recite "a descrambler for extracting program information from the transport stream, the program information including a purchase time limit associated with the time for downloading one of the audio data packets."

Applicants respectfully submit that although the amendments to the above claims are more to form, support for the foregoing amendments may be found by reference to, for example, page 26, line 12 - page 27, line 15 of the specification. Therefore, applicants respectfully submit that no new matter is added to the specification as a result of the amendments to these claims.

Rejections under 35 U.S.C. §112

The Examiner rejected all the claims pending in the application under 35 U.S.C. §112, ¶1, as failing to comply with the enablement requirement. (Final Rejection 2.) In particular, the Examiner asserts that the "purchase limit time setting means for setting a purchase limit time that is based on the time it takes to download the content data," as is recited, for example, in claim 1 is not disclosed in the specification in the locations indicated by applicants in the amendment filed on January 5, 2006. As this limitation is also present in each of the other independent claims, the Examiner also provides the same reasoning for rejecting those claims under §112, ¶1. (*Id.*, 2-3.)

FIG. 4 is a diagram that explains and describes the purchase limit time of music piece data that may be included in a program. (Specification, p.19, ll.12-13; p.26, ll.12-14.) FIG. 4 is described on page 26, line 12 through page 27, line 15 of the specification.

As a picture is worth a thousand words, one skilled in

the art will immediately appreciate the following features of FIG. 4. As that figure shows, program A includes a start time and an end time. The program includes a main broadcast, which preferably comprises a video stream and associated audio data. Program A also is shown as including three musical pieces: musical piece A, musical piece B and musical piece C. Each of these musical pieces have a time associated with downloading them once. In particular, the time for musical piece A is denoted as T_A , for musical piece B is T_B and for musical piece C is T_C .

As FIG. 4 further clearly shows, during the broadcast time of program A, musical piece A is repeatedly transmitted 15 times, musical piece B 13 times, and musical piece C 11 times. (Specification, p.26, 11.14-22.) The purchase limit time of the musical pieces A, B, and C are set at t_1 , t_2 and t_3 , respectively. (Id., p.27, 11.8-10.) As the final transmission time of each music piece data is used for re-execution, each of the purchase limit times are set as the time immediately preceding the last time that the particular piece of music data can be downloaded since the program begun. (Id., p.27, 11.3-8.)

In particular, the specification states:

The final transmission time of the music piece data on each of the musical pieces is used for re-execution. **Timing at which downloading of the music piece data transmitted immediately preceding to the final time is set as purchase limit time by using elapsed time since the program start time.** Specifically, as shown in FIG. 4, the purchase limit time of the musical pieces A, B, and C are set at timings t_1 , t_2 , and t_3 , respectively. **By setting the purchase limit time as described above, occurrence of a situation such that downloading cannot be performed in spite of an instruction of purchase can be suppressed.**

(Id., 11.6-15. (Emphasis Added.)) With reference to the

emphasized text and FIG. 4, applicants respectfully submit that the final time refers to the last transmission of each musical piece and the elapsed time is the time that the program has already run. Thus, FIG. 4 and its accompanying description make it clear to one skilled in the art that the purchase limit time is set based on the time it takes to download the content data.

Applicants therefore respectfully submit that the Examiner's rejection of claims 1, 4, 5, 6, 8, 27 and 33 as failing to comply with the enablement requirement is moot in view of this foregoing explanation. In particular, that explanation makes clear that the specification clearly describes to one skilled in the art that the purchase time limit is set based on the download time of the music piece content data. Thus applicants respectfully request withdrawal of the rejection of these claims on this basis.

Claim 4 was also rejected under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. The Examiner particularly rejected applicants' use of the phrase "substantially equal" in claim 4 as being vague and indefinite. In supporting his rejection the Examiner points to §2173.05(d) of the MPEP. §2173.05(c) is clear however in stating that the term "substantially equal" is definite. To wit:

The court held that the limitation "which produces substantially equal E and H plane illumination patterns" was definite because one of ordinary skill in the art would know what was meant by "substantially equal." *Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

(M.P.E.P., §2173.05(c)D p.2100-218. Thus, although applicants have removed the phrase "substantially equal" from claim 4, applicants respectfully note that the term "substantially equal"

is definite. 35 U.S.C. §112, ¶2.

In view of the foregoing, applicants respectfully submit that all the claims currently pending in the application meet all the requirements of 35 U.S.C. §112.

Rejection Under 35 U.S.C. §102(b)

The Examiner also rejected all the claims under 35 U.S.C. §102(b) over U.S. Patent 5,850,218 to Lajoie et al. ("*Lajoie*"). In essence, the Examiner's rejection was no different than the rejection in the first Office Action dated October 5, 2005. Applicants respectfully submit that *Lajoie* neither anticipates nor renders obvious any of the claims of the present application.

In rejecting each of the independent claims, the Examiner asserts that *Lajoie* at Col. 31, lines 1-32 discloses the limitation concerning setting a purchase limit time as is recited in each of the independent claims. Specifically, the Examiner asserts that the text "BUY UNTIL 8:15 PM" shown in event barker 544 of FIG. 28 is identical to, for example, the limitation of claim 1 calling for "purchase limit time setting means for setting a purchase limit time that is based on the time it takes to download the content data."

Other than what is disclosed in event barker 544 in FIG. 28, *Lajoie's* disclosure includes no further description of what the phrase "BUY UNTIL 8:15 PM" means. But the context and description of what is described with respect to FIG. 28 makes it clear that it is not suggestive of the feature of the claims against which it is asserted.

Once again, a picture is worth a thousand words. Although *Lajoie* does not describe in detail each and every piece of text shown in FIG. 28, one skilled in the art would appreciate the following. First, FIG. 28 illustrates a process for purchasing an Impulse Pay-Per-View (IPPV) event. (*Lajoie*,

Col. 30, ll.64-65.) After a user presses or selects 75 from an interactive program guide display 540, the event barker 544 is displayed. (Id., Col. 30, l. 66 - Col. 31, l. 1.) The event barker 544 informs the user of the IPPV event currently showing or upcoming. (Id., Col. 31, ll.1-2.)

As clearly shown in FIG. 28, the event barker 544 shows that the movie now showing on channel 75 starts at 8:00 p.m. and finishes at 10:00 p.m. It also makes it clear that a user can buy this movie up until 8:15 p.m. Thus, the phrase "BUY UNTIL 8:15 P.M." means one and only one thing in the context of FIG. 28, which has nothing to do with the download time associated with the movie. That is, the user has until 8:15 p.m. to purchase the movie. Lajoie makes no mention of setting a purchase time limit based on the time it takes to download the content data.

In fact, Lajoie's method of allowing a user to buy or purchase a movie even though the movie may have started up to 15 minutes earlier, is precisely a problem that the claim invention is intended to overcome. In particular, the background of applicants' specification makes it clear that:

In a pay-per-view carried out on a movie channel or the like in digital satellite broadcasting, purchasing (watching) a program from a mid point of the program is not sufficiently worthy. Consequently, in the case where predetermined time is elapsed since the broadcasting start time of the program, purchase limitation time is set so that the program cannot be purchased.

(Specification, p.2, ll.13-18.) Thus, Lajoie suffers from the very problem that the claimed invention is directed to. To be clear, although the movie in Lajoie is not slated to end until 10:00 p.m., Lajoie does not permit purchase of the movie after 8:15 p.m. This is so even though it does not take 1.75 hours to download a 2 hour movie. Indeed, as is the current practice

with some pay-per-view offerings even today, the movie probably really does not start until 8:15 p.m. In contrast, claim 1 recites "purchase limit time setting means for setting a purchase limit time that is based on the time it takes to download the content data."

In contrast, claim 4 recites "setting a purchase limit time based on the duration of the time it takes to download the content data."

In contrast, claim 5 recites "setting a purchase limit time that is associated with the duration in time of one of the plurality of data segments for the music content data."

In contrast, claims 6 recites "wherein the purchase limit time is set based on the time it takes to download the content data."

In contrast, claim 8 recites "stopping the receiving process in accordance with a purchase limit time that is defined by a contents data download time included in the program information."

In contrast, claim 27 recites "a generator for creating a control message, the control message including a purchase limit time that is associated with the time it takes to download the audio data."

In contrast, claim 33 recites "a descrambler for extracting program information from the transport stream, the program information including a purchase time limit that is associated with the time for downloading one of the audio data packets."

In view of the foregoing, applicants respectfully submit that *Lajoie* simply does not anticipate or render obvious any of the claims of the present application. Specifically, *Lajoie* is beset by the very prior art problem to which the claimed invention is directed. Furthermore, *Lajoie* includes no suggestion and not even the slightest hint that the purchase

time limit can be associated with the download time. *Lajoie* is therefore distinguishable from the claims for at least these reasons.

Further in that regard, the Examiner's rejection of claims 32 and 36 under 35 U.S.C. §103(a) as being obvious over *Lajoie* fails for at least the foregoing reasons. That is, as these claims depend from one of the independent claims discussed above, they are neither anticipated nor rendered obvious by *Lajoie* for at least the foregoing reasons.

* * *

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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